

LOS ANGELES
SACRAMENTO

LAW OFFICES
COTCHETT, PITRE & McCARTHY, LLP
SAN FRANCISCO AIRPORT OFFICE CENTER
840 MALCOLM ROAD
BURLINGAME, CALIFORNIA 94010
TELEPHONE (650) 697-6000
FAX (650) 697-0577

NEW YORK
WASHINGTON, DC

July 28, 2014

VIA ELECTRONIC FILING

Hon. Jesse M. Furman
United States District Court
Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

**RE: *In Re: General Motors LLC Ignition Switch Litigation*
14-MD-2543 (JMF); 14-MC-2542 (JMF)**

Dear Judge Furman:

I. INTRODUCTION

Thank you for the opportunity of submitting this application for a leadership position among Plaintiffs' Counsel for the prosecution of cases against General Motors on behalf of consumers and non-consumers seeking recovery of economic losses. Simply stated, I believe I am uniquely qualified to serve in a leadership position given the experience of having served as Co-Lead Counsel for the Toyota Economic Loss Class Action on behalf of non-consumers which resulted in a landmark settlement. *In Re: Toyota Unintended Acceleration Marketing Sales Practices and Product Liability Litigation*, MDL 2151 JVS.

Over the course of three years that the Toyota Economic Loss Class Action was prosecuted, I worked closely with the individuals presently designated as Temporary Lead Counsel (Steve Berman, Mark Robinson and Elizabeth Cabraser). We interacted with one another sharing our knowledge, strategic decisions and management responsibilities for pursuit of the case which ultimately led to a resolution that provided class members both fair compensation for their economic losses, but also superior safety improvements for their vehicles.

Given this experience, I submit this application for consideration to be appointed as a member of the Executive Committee, since this Court and consumers cannot find better Co-Lead Counsel for this case than those who presently serve the role in a temporary capacity.

II. OVERALL QUALIFICATIONS AND EXPERIENCE

I am the principal attorney at Cotchett, Pitre & McCarthy, LLP (CPM) responsible for this litigation. I have extensive experience in serving as Lead Counsel or Co-Lead Counsel in numerous

LAW OFFICES

COTCHETT, PITRE & McCARTHY, LLP

Hon. Jesse M. Furman

July 28, 2014

Page 2 of 5

complex class actions and mass tort cases involving deceptive sales and marketing practices, as well as auto product and aircraft defects. I have tried over 35 civil cases to verdict (27 by jury) and have been recognized for excellence in advocacy by selection as a Fellow of the American College of Trial Lawyers, American Board of Trial Advocates, International Academy of Trial Lawyers, International Society of Barristers, and The National Board of Trial Advocacy.

Recently, I served as Co-Lead Counsel spearheading the coordination and prosecution of over 200 claims for injury, death and economic loss against PG&E arising out of the San Bruno, California Fire which occurred on September 9, 2010, when a natural gas pipeline exploded, decimating an entire neighborhood. *In Re: San Bruno Fire Cases*, JCCP Action No. 4648. As a result of the successful resolution of those claims within three years of the date of the disaster, as well as forcing PG&E to implement new pipeline safety standards, I was recognized as the co-recipient of the 2013 Consumer Attorney of the Year Award, by the Consumer Attorneys of California ("CAOC") – a statewide organization of over 3,000 plaintiff trial lawyers.

I have extensive experience in multidistrict litigation. In addition to the *Toyota* case mentioned above, I have prosecuted cases against automobile manufacturers and aircraft manufacturers on behalf of individuals killed or injured as a result of design defects. Additionally, I was selected by the Consumers Union of United States, Inc., to serve as their co-lead trial counsel in the defense of cases brought by Japanese auto manufacturers for alleged damage to their brand due to negative safety ratings on certain vehicles published by Consumer Reports. *In Re: Isuzu Motors Ltd. v. Consumers Union of the United States and Suzuki Motor Corporation (Japan) v. Consumers of United States, Inc.* Proof of damages in that case relied heavily on regression models to capture the diminished value of the affected models.

Over the years, I have at one time or another cooperatively worked with most, if not all, of the plaintiff law firms who have filed actions in this litigation. As well, I have been able to work cooperatively with my adversaries in mass tort and complex multi-district cases, while still being able to advocate strongly and firmly on behalf of my clients. Professional and courteous relations amongst joint counsel, as well as between opposing counsel, are essential to the conduct and management of a complex multidistrict action such as this one. See Manual for Complex Litigation (Fourth), Author's Comments to Role of Counsel § 1 0.21, p. 40 citing *Northern Indiana Public Service Co. v. Certain Underwriters* at Lloyd's London, 1996 WL 115466 at * 1 (N.D. Ind. 1996).

I previously served as Co-Lead Trial Counsel in the *In Re: Bextra and Celebrex Marketing, Sales Practice and Products Liability Litigation*, MDL No. 1699, which in 2008 settled on the verge of selecting a jury after years of exhaustive litigation. Many of the plaintiffs' attorneys in that action are the same ones involved in this litigation, including the present Temporary Lead Counsel, Elizabeth Cabraser and Steve Berman, who served as Co-Lead Counsel in the *Bextra* and *Celebrex* case.

Currently I serve as Plaintiffs' Liaison Counsel coordinating the prosecution of over 30 cases filed on behalf of injured passengers against Asiana Airlines and Boeing arising from the crash of Asiana Airlines Flight 214 in San Francisco on July 6, 2013. *In Re: Air Crash At San Francisco, California, On July 6, 2013*, USDC, Northern District of California, MDL 02497. I also currently

LAW OFFICES

COTCHETT, PITRE & McCARTHY, LLP

Hon. Jesse M. Furman

July 28, 2014

Page 3 of 5

serve as Co-Lead Counsel along with Steve Berman in a shareholder derivative action against members of PG&E's Board of Directors for their breach of fiduciary duties to shareholders regarding PG&E's failed compliance with pipeline safety regulations which led to the Company's exposure to over \$2 billion in penalties and losses arising out of a gas pipeline explosion. *Salman, et al. v. Darbee, et al.* JCCP Action 4648-C.

I am privileged to have been recognized by my peers for my trial experience and leadership skills. I was honored by the San Mateo County Trial Lawyers Association as Trial Lawyer of the Year in 2006, twice nominated as Trial Lawyer of the Year by Public Justice (2000 and 2014), and three times nominated as Trial Lawyer of the Year by CAOC (2004, 2011 and 2013).

III. QUALIFICATIONS AND EXPERIENCE UNIQUE TO THE ISSUES OF SIGNIFICANCE IN THIS CASE

As previously mentioned, I served as Co-Lead Counsel for the Economic Loss Class Plaintiffs and Non-Consumer Plaintiffs in the nationwide Toyota Sudden Acceleration Cases, having been appointed by Federal District Court Judge James Selna. *In Re: Toyota Unintended Acceleration Marketing Sales Practices and Product Liability Litigation*, MDL 2151 JVS. I participated in numerous strategy conferences with other Co-Lead Counsel regarding case development and argued motions before the Court and Special Masters. I coordinated the selection and development of the plan for depositions of over 40 class representatives across the country, preparing and defending the depositions of several myself. I took the lead along with Steve Berman in formulating, preparing and supporting the damages model used by Plaintiffs' economic expert to establish class wide damages for consumers and non-consumers. The model developed by Mr. Berman and I served as the basis for structuring payments to consumers for diminished value claims as part of the final settlement. In this regard, I worked closely with the Plaintiffs' damages experts and consultants in preparing the damages models for vehicles across 22 product lines and 10 model years, as well as reviewing the detailed analyses and data used to support those models. I worked with Plaintiffs' experts in developing, testing and refining their regression analyses which included over 66 different regression equations and statistical tests. Additionally, I took the lead in deposing Toyota's damages experts, which required an exhaustive analysis and de-construction of a variety of attacks on the statistical analyses and damages models developed by Plaintiff's expert, coupled with a thorough review of the applicable legal principles and standards under *Daubert*.

Further, I was involved in all of the negotiations that ultimately resulted in the resolution of the *Toyota* economic loss class action matter. Steve Berman, Marc Seltzer (another co-lead counsel for the economic loss consumer class) and I discussed strategy regarding potential settlement of the *Toyota* Economic Loss litigation. Since I was most familiar with the regression model used for computation of diminished value for the affected Toyota vehicles, I focused on establishing the reliability of the damages model to support claims for diminished value in settlement negotiations. Since that time, I have participated as a panelist in the Harris Martin Seminar held at Chicago, Illinois on May 28, 2014, addressing key issues for the successful prosecution of claims against General Motors. The focus of my presentation addressed the use of regression models to establish class wide damages under applicable legal standards. I have also worked with Steve Berman and

LAW OFFICES

COTCHETT, PITRE & McCARTHY, LLP

Hon. Jesse M. Furman

July 28, 2014

Page 4 of 5

members of his firm strategizing on the development of damages models for the General Motors cases.

Because of my focused experience in both the *Consumers Union* and *Toyota* cases working with experts to assess and develop class wide damage models to measure diminished value claims across many different vehicles in auto safety defect cases, I believe I am uniquely qualified to serve in a leadership role as a member of the Executive Committee for these cases.

IV. RESOURCES

My firm, Cotchett, Pitre & McCarthy, LLP. (CPM) is a nationally recognized litigation firm with substantial experience in complex multi-district litigation in a wide variety of fields, ranging from products liability, securities and antitrust litigation. CPM has vast experience prosecuting complex cases from inception through trial of the same nature and scale as the *In Re: General Motors LLC Ignition Switch Litigation*, both individually and as class counsel.

Additionally, CPM has the resources and experience to litigate a complex case of this magnitude and is committed to expending the time, energy and financial resources necessary to work cooperatively with other attorneys to successfully prosecute this litigation. CPM has been involved in major complex cases for the last 47 years and has the experience, knowledge and skill to efficiently prosecute this action. My firm has a long and extensive history litigating matters involving automotive product defects and consumer safety issues and I have been in the forefront of leading those cases on behalf of CPM. CPM has served as Co-Lead Counsel in numerous complex antitrust actions¹, MDL suits and Class Action cases and has served as either Lead Counsel or in leadership positions on Plaintiffs' Steering Committees in many of those cases.

CPM, with offices in the San Francisco Bay Area, Los Angeles, Washington, DC and New York City, has litigated cases nationwide including the Southern District of New York and is well versed in the Federal Rules of Civil Procedure as well as the Southern District of New York.

With my lead, CPM is committed and will continue to investigate this case and possesses the economic resources and commitment to perform the substantial work necessary through all phases of this litigation. I have participated in meeting and discussions with Temporary Lead Counsel regarding the litigation and compliance with the Orders of the Court, and I have independently conducted research and analyses regarding various causes of action and the impact of those claims on recoverable damages for both consumers and non-consumers.

¹ Notably in *Air Cargo Shipping Services Antitrust Litigation*, USDC, Eastern District of New York; and currently as Co-Lead Counsel in the *Lithium Ion Batteries Antitrust Litigation*, USDC, Northern District of California; *Auto Parts Antitrust Litigation*, USDC, Eastern District of Michigan; and *Freight Forwarders Antitrust Litigation*, USDC, Eastern District of New York.

LAW OFFICES

COTCHETT, PITRE & McCARTHY, LLP

Hon. Jesse M. Furman

July 28, 2014

Page 5 of 5

V. CONCLUSION

In reviewing my qualifications, experience and background, I strongly believe that I meet the requirements for appointment as a member of the Executive Committee. Furthermore, I believe I am uniquely knowledgeable about the applicable law and its application to the specific facts of this case. My experience working on the *Toyota* Economic Loss litigation, particularly with Mr. Berman in the class wide damage model is unique and will prove invaluable in litigating the General Motors cases.

I would be honored to serve as a member of the Executive Committee. I am prepared to provide the breadth of my skill, expertise and resources of my firm to this litigation for the benefit of consumers and non-consumers.

I respectfully request that this Court appoint me as a member of the Executive Committee.

I would like to briefly address the Court in person at the **August 11, 2014** Initial Conference, should the Court decide to permit applicants that opportunity.

Respectfully Submitted,

/s/ Frank M. Pitre

FRANK M. PITRE

COTCHETT, PITRE & McCARTHY, LLP

840 Malcolm Road, Suite 200

Burlingame, CA 94010

-and-

40 Worth Street,

10th Floor

New York, NY 10013